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HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.A.No.1053/2002

Appellants	1. Ashok S/o. Kamala, Aged 21 years, R/o. Village Deori, P.S. Batauli, Distt. Sarguja. 2. Kalindar S/o. Bhanwar, aged 21 years, Occupation: Agriculture, R/o. village Virimkela, Distt. Sarguja (CG)
	Versus
Respondent	State of Chhattisgarh Through P.S. Sitapur Distt. Surguja (CG)

Appeal under Section 374 of Criminal Procedure Code.

Present :

Shri V.C. Ottalwar, learned counsel with Shri Ganesh Prasad Gupta, counsel for the appellants.
Shri Arun Sao, learned Government Advocate for the State/respondent.

ORAL JUDGMEMNT
(22.05.2007)

SUNIL KUMAR SINHA, J.

This appeal is directed against the judgment of conviction and order of sentences dated 9.8.2002 passed in sessions trial No.257/2001 by the IVth Additional Sessions Judge, Ambikapur, District-Surguja (CG), whereby the said Court, after holding the appellants guilty of the offences punishable under Sections 323 read with Section 34 and 376 (2) (g) of IPC, sentenced them to undergo R.I. for 6 months & R.I. for ten years and to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for 3 months respectively.

(2) The case of the prosecution is that on 11.3.2001 at about 1.30 p.m., the prosecutrix namely Smt. Koushalya Bai (PW-3), a married lady aged about 23 years, lodged the First Information Report Ex.P-3 that on 10.3.2001, at about 11.00 p.m. when she was present in her house along with her husband Narayan (PW-9) and family, at that time, the appellants herein namely Ashok and Kalinder, along with the other co-accused namely Jeetan came to their house and called her husband. When the door was opened, they started beating her husband with hands and fists, on which, her husband somehow, ran away towards the house of Surpanch and taking advantage of this situation, they caught hold of her, dragged her to some distance and thereafter committed sexual intercourses one after another against her. She has specifically mentioned the names of appellants Ashok and Kalinder and has also mentioned the name of the co-accused Jeetan and has stated that firstly Ashok has committed sexual intercourse, thereafter Kalinder committed and then lastly Jeetan has committed sexual intercourse against her and after completion of the said act by these appellants, they ran away from the place of occurrence. She has further specifically mentioned that the incident was witnessed by three witnesses namely Koushalya Bai (PW-5), Asha (PW-11) and Susheela (PW-12). After lodging the First Information Report, the prosecutrix was sent for medical examination under Ex.P-8 and was examined by Dr. Sarita Singh (PW-8) who prepared her report Ex.P-17. According to her report, no external injuries were noticed on the body of the prosecutrix. On the local examination, she found that the pubic hairs were well developed and were not malted. Secondary

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Sexual characters were well developed and there were no injuries on the private part. On the internal examination, she found that vagina was admitting two fingers easily and she was complaining pain on touch. According to the opinion of the Doctor, she did not notice any sign of recent sexual intercourse. Asha (PW-11) had also received some injuries and was sent for medical examination under Ex.P-10. Her medical report was given by Dr. M. Nikunj (PW-10) vide Ex.P-10-A, according to which she had received a simple injury. Likewise, Koushalya Bai (PW-5) W/o Chamruram was also sent for medical examination under Ex.P-11 and her report Ex.P-11-A was prepared by the same Doctor, according to which she had also received simple injury. It appears that firstly, the prosecutrix was sent for examination to Community Health Center, Sitapur under Ex.P-12 and a report (unproved) dated 12.3.2001 was obtained, but, this report was only to the extent of external examination, perhaps for the reason that no lady doctor was available, therefore, she was sent to Ambikapur from where the report Ex.P-17 referred to above, was obtained. Thereafter, after completion of usual investigation, the charge sheet was filed in the Court of Judicial Magistrate First Class, Ambikapur who committed the case to the Court of Sessions by order dated 13.8.2001 from where the matter was received on transfer by the IVth Additional Sessions Judge, Ambikapur who in turn conducted the trial against the two appellants, because the third accused namely Jeetan was absconding, and passed impugned judgment. It is against this judgment of conviction and order of sentences passed by the IVth Additional Sessions Judge, Ambikapur, the appellants have filed this appeal.

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(3) The conviction and sentences of the appellants are mainly based upon the testimony of the prosecutrix namely Koushalya Bai (PW-3).

(4) Learned counsel for the appellants argues that the testimony of Koushalya Bai (PW-3) is fully unreliable. His submission is that Smt Santoshi is the sister of the appellant namely Ashok and is wife of the appellant namely Kalinder. Hence, Kalinder is brother-in-law (*Jeeja*) of Ashok. Likewise the accused No.3 Jeetan is the brother-in-law of prosecutrix Koushalya Bai (PW-3). Hence, he is brother-in-law *(Sadoo)* to her husband Narayan (PW-9) and the appellant Ashok is Narayan's Sister's son, and likewise the prosecution witnesses namely Koushalya Bai (PW-5) and Susheela (PW-12) are sisters-in-law *(Nanand)* of the prosecutrix and other witnesses namely Asha (PW-11) is also her sister-in-law *(Devrani)*. He submits that in fact there was a simple *'marpit'* in the family on account of some dispute and the three eye witnesses named in the First Information Report have not supported the case of prosecution so far as the allegations of rape having been committed by the appellants on the prosecutrix is concerned. He further submits that in such a close relation, a possibility of commission of gang rape appears to be unreasonable. He also submits that it has come in the evidence of Koushalya Bai (PW-5) and Narayan (PW-9) that previously on report of Santoshi (sister of Ashok) regarding commission of rape, the brother-in-law *(Devar)* of prosecutrix namely Naresh was put in jail, therefore, due

to previous enmity, a quarrel had taken place and a false report regarding gang rape had been made.

(5) On the other hand, learned counsel for the State opposes these arguments. He supports the judgment of conviction and order of sentences passed by the Sessions Court.

(6) I have heard the learned counsel for the parities at length and have also perused the record of Sessions Case.

(7) Koushalya Bai (PW-3) has deposed in her evidence that on the fateful day at about 11.00 p.m., these appellants along with the absconding accused Jeetan came to their house. Jeetan asked to open the door, on which, the door was opened by her husband and they started assaulting her husband in the courtyard of the house. On this, her husband ran away towards the house of Surpanch namely Niranjan. Thereafter, all the three persons caught her on which she cried. Then, her two sisters-in-law namely Asha (PW-11) and Susheela (PW-12) came over there but they could not rescue her on account of fear of being beaten by them and the accused persons dragged her to the field near her house and thereafter they threw her on the ground and completely undressed her. Firstly, the appellant Ashok has committed sexual intercourse, thereafter, the appellant Kalinder committed and then lastly, accused Jeetan has also committed sexual intercourse against her. She further deposed that when these persons left the place of occurrence, then Asha (PW-11) and Susheela (PW-12) came over there and took her from the said place to the house and

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thereafter a report was lodged on the next day. In para 11 of the cross-examination, she has stated that two years prior to the said incident, on the report of Santoshi, sister of Ashok, her brother-in-law namely Naresh was sent to jail. In para 14, she has admitted that it was a report of rape made by her. She has further admitted in para 15 that at the time of *'marpit'* her two sisters-in-law namely Asha (PW-11) and Susheela (PW-12) were sleeping in a room, meaning thereby they were present at the scene of occurrence and they had seen the *'marpit'* and had also seen that the appellants had dragged her from the house to the said place of occurrence.

(8) Smt Koushaslya Bai (PW-5) has deposed that on the fateful day at about 11.00 p.m. she was sleeping in the house, at that time three accused persons came over there and after getting the doors opened, started beating Narayan (PW-9). When she came to rescue Narayan (PW-9), she was beaten by the sister of Ashok namely Santohsi (not an accused in this case). She also deposed vide para 4 that Koushalya Bai (PW-3) had told her that the accused persons had committed bad thing with her. That is to say, that she was not an eye witness of the incident of commission of rape as has been stated by Koushalya Bai (PW-3) in the First Information report. Asha (PW-11) has deposed that on account of a dispute regarding taking a motor cycle by Panda (Narayan), Ashok and kalinder went to his house and Ashok asked about the motor cycle on which Panda (Narayan) said that motor cycle has been sent to the police station. Panda (Narayan)

assaulted Ashok and thereafter some more assault took place between them and then a report was lodged by the wife of Panda (Narayan) in the police station. As stated above, this witness is the sister-in-law *(Devrani)* of the prosecutrix Koushalya Bai (PW-3). She has been declared hostile by the prosecution and after the lengthy cross-examination of this witness, nothing supportive to this fact has been brought on record to show that in fact either she had witnessed the dragging of the prosecutrix or she has witnessed the commission of sexual intercourse by the three accused persons against her.

(9) Susheela (PW-12) is the elder sister-in-law *(Nanand)* of the prosecutrix. She has deposed that on the fateful day, the appellants Ashok and Kalinder had come to the house of Narayan and they had beaten him and thereafter, they had beaten her also. She has specifically stated that thereafter Narayan had gone to the house of Surpanch and at that time the wife of Narayan namely Koushalya Bai (PW-3) came to her and told her that Ashok has committed sexual intercourse against her. After that, Koushalya Bai (PW-3) and Naresh along with Narayan and this witness, had gone to the police station. From the above evidence of this witness, it is clear that the prosecutrix had only taken the name of the appellant Ashok and she had not taken the names of other two accused persons. Not only this, in the cross-examination, vide para 2, she has stated that when the wife of Narayan i.e. the prosecutrix Koushalya Bai (PW-3) went to the house of Surpanch, she had only stated that accused persons abused her and they had committed *'marpit'* against her. That means, she has not said

about the commission of sexual intercourse against her at that time. This witness has also deposed that she had only seen *'marpit'* and never seen or knew about commission of any illegal act (sexual intercourse etc).

(10) Niranjan Ram, who is the Surpanch of the village, has also been examined in this case as PW-7. He has stated vide para 2 of his evidence that on the fateful day Narayan Panda (PW-9) and his wife had came to his house and they had stated that accused Kalinder had come to their house along with his two associates and have assaulted them. He has further stated that except this, nothing was known to him. This witness has been declared hostile by the prosecution and a lengthy cross-examination has been done, but, nothing could be brought on record which may show that this witness was informed by the prosecutrix or by her husband that the prosecutrix was subjected to sexual intercourse by these three accused persons.

(11) It is settled principle that when the version of the prosecutrix inspires confidence of the Court and the Court feels it proper to depend on testimony of prosecutrix, a conviction can well be based on the sole testimony of the prosecutrix needing no corroboration thereof. The principle pertaining to testimony of a solitary witness equally applies in case of a rape victim that neither the legislature nor the judiciary mandates that there must be particular number of witnesses to record an order of conviction against the accused. Our legal system has always laid emphasis on value, weight and quality of evidence rather

than on quantity, multiplicity or plurality of witnesses. About the rape victim, it is also to be remembered that the status of the victim is equivalent to the status of an injured witness and the evidence of a victim of sexual assault stands on par with evidence of an injured witness. Just as a witness who has sustained an injury is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of a sex offender is entitled to great weight, absence of corroboration notwithstanding. That is to say that before depending on the testimony of the prosecutrix and basing conviction on her testimony, it must inspire the confidence of the Court and if such a confidence is gained by the Court after going through her evidence and her conduct, the conviction is possible even without corroboration. *Per contra*, if she does not inspire the confidence, even on supporting the evidence, she can be falsified. Conviction on her evidence even with the aid of supporting evidence would not be possible.

(12) In the present case, the version of the prosecutrix does not appear to be true and free from malice and that it does not inspire the confidence of the Court. The reason is that her version is quite unnatural. It does not appear to be reasonable that three persons, who were the close relatives of the family of the prosecutrix, as has been stated earlier, could be able to take the prosecutrix in presence of 3-4 persons in the family including the husband, that too on a simple dispute and after dragging her to a very short distance from the house, which is in the dense locality, will further be able to commit forceful

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sexual intercourses against her. In this regard, the prosecutrix has mentioned in the First Information Report that that the occurrence was witnessed by her 3 sisters-in-law namely Koushalya Bai (PW-5), Asha (PW-11) and Susheela (PW-12), but none of them have supported her story in the Court. Rather, it comes in their evidence that they had only witnessed the' *'marpit'* which had taken place in the house of the prosecutrix with her husband and also with the prosecutrix. It is the case of the prosecution itself that Koushalya Bai (PW-5) and Asha (PW-11), both were present in the house and they had also received injury for which they had been medically examined by the Doctor. Therefore, they also stand on the same footing that they were the injured witnesses and a weightage has to be given to their evidence also. They have not supported the case of prosecution so far as rape is concerned. Even Asha (PW-11) has stated vide para 3 in the cross-examination by the State, after being declared hostile and when the reference was made to her previous statement, that "why she will implicate the accused persons without their mistake?". Then she said that she has not stated anything about rape.

(13) Not only this, the version of the prosecutrix is also not supported by the medical evidence. If a lady is dragged per force by three accused persons to some distance and is thrown on the ground in a naked condition and thereafter forceful sexual intercourses are committed against her by one after another for three times, it is quite natural, though not as a matter of rule, that a possibility of receiving some external injury on the body would be there which is not present in

this case. Even the opinion of the Doctor pertaining to sexual intercourse is not favourable.

(14) In the above facts and circumstances of this case, the version of the prosecutrix does not inspire the confidence of the Court so as to record conviction on her sole testimony or even with the aid of the so called corroborative evidence and the Sessions Court committed error of law by recording a finding of conviction against the accused persons. It is a case of false implication about rape in a matter of '*mar-pit*' as both the parties were in habit thereof, and the story set forth deserves to be discarded.

(15) The appeal deserves to be allowed and the conviction and sentence awarded to the appellants deserve to be set aside. Accordingly, this appeal is allowed. Conviction and sentences awarded to the appellants are set aside. It is stated that the appellants are in jail since last six years. They be set at liberty forthwith, if not required in any other case.

Sd/-
SUNIL KUMAR SINHA
Judge

Priya